Filed 3/1/00 (reposted 3/2/00 to correct acting presiding justice designation)

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION TWO

STATE OF CALIFORNIA

DIANA DERRICK PATIENCE, Plaintiff, Cross-defendant and Respondent, v. DONNA MARIE SNYDER et al., Defendants, Cross-complainants and Appellants.	E022682 (Super.Ct.No. VCV006982) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Eric M. Nakata, Judge. (Judge of the Municipal Court, assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Office of Pope & Gentile and Daniel K. Gentile for Defendants and Appellants.

Lynn E. Zumbrunn and Gregory L. Zumbrunn for Plaintiff and Respondent.

Donna Maria Snyder and Georgie May Wilson (defendants and appellants - Wilson is also a cross-complainant) appeal from the judgment entered against them and in

SEE DISSENTING OPINION

favor of Diana Derrick Patience (plaintiff, cross-defendant and respondent) on Patience's complaint to cancel a quitclaim deed from Kenneth Lee Derrick to Wilson, conveying Derrick's interest in a home that he had acquired with Patience as joint tenants in 1984. Derrick and Patience had lived together for many years and, although they were not legally married, they were identified as husband and wife on the joint tenancy deed through which they secured title. When Derrick and Patience ended their relationship in 1988, Patience moved out and Derrick continued to live in the house until his death on March 29, 1995. After he and Patience split up, Derrick entered into a relationship with Donna Snyder. On March 21, 1995, about one week before he died (and apparently knowing that his death was imminent), Derrick signed a quitclaim deed conveying his interest in the property to Snyder's mother, Georgie Wilson. Derrick died on March 29, 1995, at 11:55 a.m. and the quitclaim deed bears a recording stamp of 12:54 p.m. of the same day. After Derrick's death, Snyder apparently moved into Derrick's house and Patience filed this lawsuit against her and Wilson.

Snyder and Wilson answered the complaint and Wilson cross-complained seeking, in effect, to quiet title to the property in Wilson. Patience moved for summary adjudication and summary judgment asserting that the quitclaim deed was invalid because it had not been legally delivered to the grantee and, even if legally delivered, it was not recorded before Derrick's death, as required by Civil Code section 683.2, subdivision (c).[1] To support this

---

[1] Civil Code section 683.2, subdivision (c) provides: "Severance of a joint tenancy of record by deed, written declaration, or other written instrument pursuant to subdivision (a)

[footnote continued on next page]

latter claim, Patience relied on the undisputed facts that Derrick executed the quitclaim deed on March 21, 1995; Derrick died at 11:55 a.m. on March 29, 1995; and the quitclaim deed bears a recording date and time stamp of 12:54 p.m. on March 29, 1995.

In their opposition to Patience's summary judgment motion, defendants claimed that triable issues of material fact existed with respect to both the issue of delivery and the timeliness of recordation of the quitclaim deed. Specifically, defendants claimed that Derrick constructively delivered the deed to Wilson by giving it to Mark Rotarius on the day Derrick signed the deed. Defendants also argued that under Civil Code section 1170, the deed was "deemed recorded" when it was given to a clerk in the recorder's office around 11:15 a.m., about 40 minutes before Derrick's death, even though the recorder's office did not date and time stamp the document until nearly an hour after Derrick's death.

With regard to the second issue Rotarius stated in his declaration that he arrived at the "Recorder's Office at approximately 11:00 a.m. on March 29, 1995 and . . . personally delivered the Quitclaim Deed to the Recording Clerk at approximately 11:15 a.m. and requested that she record the Deed immediately. The Recording Clerk advised [Rotarius]

[footnote continued from previous page]
is not effective to terminate the right of survivorship of the other joint tenants as to the severing joint tenant's interest unless one of the following requirements is satisfied:

(1) Before the death of the severing joint tenant, the deed, written declaration, or other written instrument effecting the severance is recorded in the county where the real property is located.

(2) The deed, written declaration or other written instrument effecting the severance is executed and acknowledged before a notary public by the severing joint tenant not earlier than three days before the death of that joint tenant and is recorded in the county where the real property is located not later than seven days after the death of the severing joint tenant."

that a Preliminary Change of Ownership Report and another form was also needed. She gave [him] the forms to complete and kept the Quitclaim Deed in her possession to be recorded. [Rotarius] then completed the requested forms and delivered them back to the Recording Clerk. The Recording Clerk then approved all documents, handed them back to [Rotarius] along with the Quitclaim Deed and told [him] to take them to the Cashier. The Cashier then stamped the documents and gave [Rotarius] certified copies." Defendants also submitted the declaration of Steve Dietrich who stated that he went with Rotarius to the recorder's office on March 29, 1995, and that the events occurred as Rotarius described them in his declaration.

The trial court found that there were no triable issues of material fact. The court granted Patience's motion for summary adjudication on the first, fifth, and sixth causes of action. These actions were, respectively, for cancellation of the quitclaim deed, quiet title and ejectment. The parties stipulated to judgment in favor of Patience and against defendants Wilson and Snyder on the remaining causes of action and this appeal ensued. We affirm the trial court.

ANALYSIS

I. Standard of Review on Summary Judgment

Independent review is the proper standard of appellate review after a grant of summary judgment. We first review the complaint to determine the issues subject to adjudication. Second, we determine whether plaintiff's showing has established facts which

justify a judgment in her favor. If plaintiff has made such a showing, and her summary judgment motion prima facie justifies a judgment, the burden shifts to defendants to raise a triable issue of fact. Thus, the third step of our review is to determine whether the opposition demonstrates the existence of a triable, material factual issue. (*Daddario* v. *Snow Valley, Inc.* (1995) 36 Cal.App.4th 1325, 1339, citing *Zuckerman* v. *Pacific Savings Bank* (1986) 187 Cal.App.3d 1394, 1400-1401.)

II. Issues Identified By the Pleadings

Patience's pleadings assert, among other things, the invalidity of the quitclaim deed which defendants claim severed the joint tenancy. The pleadings assert two theories, the first being that Derrick did not actually or constructively deliver the deed to Wilson with the present intent to convey his interest in the property. We believe the deed was delivered but that is not dispositive of the case. Delivery must be followed by recordation in order to sever the joint tenancy. We find there was no timely recordation.

Patience's pleadings assert that the quitclaim deed was invalid because it was not "recorded" as required to sever the joint tenancy, under Civil Code section 683.2, subdivision (c)(1). That subdivision provides in pertinent part that a document severing joint tenancy is effective only if the instrument "[b]efore the death of the severing joint tenant . . . is recorded in the county where the real property is located." Thus, Patience's right of survivorship would not be extinguished unless defendants can show the deed was "recorded" before Derrick's death.

III. Patience's Moving Papers Entitled Her to Judgment in Her Favor

Under step two of our analysis we look to Patience's moving papers in the motion for summary judgment. She showed, by reference to portions of defendants' deposition answers, that neither Wilson nor Snyder denied that the quitclaim deed was record-stamped by the recorder's office some 59 minutes after Derrick died. On the basis of this undisputed evidence, Patience's showing was sufficient to justify judgment in her favor, unless defendants could make some additional showing. The crux of the matter thus comes down to step three of the analysis: whether defendants have raised a triable issue of material fact.

IV. Defendants Failed to Raise a Triable Issue of Material Fact

Whether the Deed Was Properly "Recorded" Before Derrick's Death

A. The Deed Here Is Considered "Recorded" When It Is "Deposited" with the Recorder

Recording of a document generally consists of copying the instrument in the record book and indexing it under the names of the parties. (4 Witkin, Summary of Cal. Law, (9th ed. 1987) § 200, p. 406.) The Government Code imposes numerous duties upon the recorder and requires the maintenance of a variety of books and indexes. (Gov. Code, § 27201 et. seq.) The first recordation statutes contemplated that there could be some delay between the receipt of the document and the entries (made by hand in the early days) in record books. Even with the advent of the typewriter and photographic copying methods, there was still some delay in completing the recording process. Recordation is not yet instantaneous (although technological advances may provide us with that luxury in the

future); as a result, we are forced to deal in some cases with the consequences of a time lag between the steps of the recordation process.

Civil Code section 1170 provides that, "[a]n instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the recorder's office, with the proper officer, for record." This provision was originally enacted in 1872. According to the literal language of the statute, "recordation" is considered complete when the subject document is "deposited" with the proper official. Civil Code section 1170 does not always govern, however. Whether it applies depends on the purpose of the "recordation" requirement in Civil Code section 683.2.

The California Supreme Court held in *Dougery* v. *Bettencourt* (1931) 214 Cal 455, that Civil Code section 1170 did not apply where the purpose of a recordation requirement is to give constructive notice to the world of the fact or content of a recorded document. (*Id*. at p. 463.) Unless the actual indexing and filing has been completed, a "recorded" document cannot give such constructive notice. Therefore, the Supreme Court decided, mere deposit is not sufficient where the purpose of the recordation requirement is to give constructive notice; actual recordation must be completed. "Section 1170 of the Civil Code was never intended to apply to those situations where the recordation of the instrument was intended as constructive notice to third persons." (*Id*. at p. 464.)

By contrast, Civil Code section 1170 does apply where "the object of the statute in requiring . . . [recordation] was not to give [third parties] constructive notice; but was to make the [act] public and irrevocable." (*Dougery* v. *Bettencourt*, *supra*, 214 Cal 455, 465.) That is, if "'the evident purpose of the statute [requiring recording] is to make the

instrument a matter of public record, or when the recording of an instrument is an essential step in perfecting some right or completing some act . . . [such as] a declaration of homestead, or an assignment for the benefit of creditors, the depositing of the instrument in the recorder's office is sufficient . . . .'" (*Id*. at p. 463.)

The purpose of the recording requirement in Civil Code section 683.2, subdivision (c), is more closely analogous to perfecting a right or merely making a public record of the instrument, rather than providing constructive notice to third parties. The purpose of Civil Code section 683.2 is to "prevent fraud" or to prevent secret suppression of what would otherwise be actual severance, and not to provide record notice to purchasers of the state of title. (*Estate of England* (1991) 233 Cal.App.3d 1, 6.) Therefore, "deposit" is sufficient to accomplish the statutory objective.

We now reach the issue which is at the heart of this appeal. Was what Rotarius did sufficient to constitute a "deposit" of the deed with the proper official in the recorder's office? We think not.

B. Rotarius Did Not Give Up Control of the Deed Nor Make an Irrevocable Deposit With a Public Official

The key to defendants' opposition to Patience's motion for summary judgment is the declarations of Mark Rotarius and Steve Dietrich. These declarations are as remarkable for what they do not say as for what they do say.

Rotarius and Dietrich arrived at the recorder's office at approximately 11 a.m. Rotarius gave the quitclaim deed to a clerk at 11:15 a.m. and asked that it be recorded immediately. The clerk told Rotarius he would need a form for preliminary change of

ownership and an additional form. The clerk retained possession of the quitclaim deed. Rotarius "completed the requested forms" and gave them to the clerk. Dietrich averred that Rotarius completed the forms "in my presence." The clerk looked over the documents and then handed them all back, including the quitclaim deed, to Rotarius. The clerk directed Rotarius to take the documents to the cashier. The cashier received the documents, stamped them, and gave Rotarius certified copies.

The quitclaim deed was stamped at 12:54 p.m. on March 29, 1995. Nothing in Rotarius's or Dietrich's declarations explains what happened in the nearly one-and-one-half-hour delay between their arrival at the clerk's counter and the stamping of the deed.

For example, they make no mention of the time they actually returned to the counter with the completed forms. The only reasonable inference is that they did so only shortly before the documents were stamped at 12:54 p.m., and after Derrick had died.

In addition, there are open questions about the validity of Rotarius's acts. Pursuant to Revenue and Taxation Code section 480.3, subdivision (a), the form for "preliminary change of ownership" was required to be signed personally by Wilson, the proposed transferee, and not by an agent acting for the transferee. According to Rotarius's and Dietrich's declarations, the clerk informed them, once they arrived at the counter, that such a form was necessary. Manifestly, therefore, Rotarius did not previously know about the requirement for a change of ownership form and could not have had a completed one already in his possession. Dietrich expressly states that he saw *Rotarius*, not Wilson, "complete" the form. Neither Rotarius nor Dietrich make any mention of leaving the recorder's office and taking the form to Wilson for signature when, if they had done so,

their declarations should and could easily have reflected the fact. Accordingly, the only plausible inference is that Rotarius, not Wilson, filled out the form, in violation of the statutory requirements. The declarations on their face, therefore, demonstrate not proper deposit, but probable invalidity of the attempted recordation.[2] (Cf. *Thompson* v. *Williams* (1989) 211 Cal.App.3d 566, 573 ["[A] party cannot rely on contradictions in his own testimony to create a triable issue of fact."].)

We pass over this matter, however, as we believe there are even more cogent reasons for finding defendants' declarations inadequate to raise a triable issue of fact. We observe in passing that it ill behooves defendants to ask this court to intervene on their behalf when they have failed to provide a clear factual record of what transpired, and when it was easily within their power to have done so.

As we have noted, the purpose of the recordation requirement [in Civil Code section 683.2, subdivision (c)(1)] is to make the act of severance public rather than to provide constructive notice of the act. Once the document is deposited with the appropriate official, the severing joint tenant no longer controls the document and therefore cannot

---

[2] Revenue and Taxation Code section 480.3, subdivisions (b) and (c), allow an alternative procedure for procuring the change of ownership form. Revenue and Taxation Code section 480.3, subdivision (b) provides that the change of ownership form need not be filed concurrently with the recording of a deed changing ownership; Revenue and Taxation Code section 480.3, subdivision (c) provides that the failure to have the form will not delay recordation of a deed provided a $20 fee is paid. Significantly, Rotarius's and Dietrich's declarations say nothing about paying the $20 fee in lieu of concurrent filing of the change of ownership form. Although it might be conceivable that Rotarius paid the fee rather than filing a change of ownership form, his and Dietrich's declarations state specifically that Rotarius "completed" the forms. Again, the only plausible inference available from the

[footnote continued on next page]

conceal the fact of the severance. In *Dougery* v. *Bettencourt*, *supra*, 214 Cal. 455, the California Supreme Court emphasized that "deposit" is a sufficient recording when the purpose of the recording requirement is not to provide constructive notice, but is to make the recorded act "public and irrevocable." (*Id*. at p. 465.)

Here, Rotarius's and Dietrich's declarations unequivocally demonstrate that, even though Rotarius "gave" the quitclaim deed to the clerk "for recordation" at 11:15 a.m., he did not thereby relinquish control over the document. The clerk's temporary retention of the deed was just that—temporary. There was nothing irrevocable or irretrievable about the clerk's temporary possession of the quitclaim deed which would have satisfied the purpose of the statute—making the severance a matter of public record. In point of fact, the clerk gave the deed and other documents back to Rotarius. Rotarius thus had complete control over the quitclaim deed at some time after 11:15 a.m., after he had completed the other forms (however long that took), and inferentially only a short time before 12:54 p.m., when the deed was stamped. When the clerk returned the documents to Rotarius, he was obviously free to simply walk out of the office with them, leaving no trace whatever of the purported "severance" in the public records. Had he departed with the documents, it would defy logic to conclude that the clerk's temporary possession of the documents had satisfied Civil Code section 683.2.

[footnote continued from previous page]
face of the declarations is that Rotarius filled out the form himself, and does not support the inference that he instead paid a fee. The record is frustratingly unclear on the point.

Because the undisputed facts, even under defendants' opposing declarations, establish as a matter of law that Rotarius had not irrevocably relinquished control over the documents, there was no "deposit" at 11:15 a.m. The only proof of any time at which Rotarius did in fact irrevocably relinquish control over the quitclaim deed was the recorder's date stamp at 12:54 p.m., 59 minutes after Derrick's death. Defendants have failed to raise any triable issue of fact to show otherwise.

We can quickly dispose of two of defendant's arguments which are patently invalid. Defendants urge us to ignore a clear statutory time period in Civil Code section 683.2(c)(2) which allows for severance where a deed is executed by a deceased joint tenant "not earlier than three days before the death" of the joint tenant. They would have us simply ignore the fact that the deed in this case was executed eight days before Derrick's death. We choose not to accept this invitation to legislate by judicial opinion. Defendants also urge us to find substantial compliance with Civil Code section 683.2(c)(2) even if we find that the deed was recorded 59 minutes late. Once again, we decline to alter the legislative scheme which clearly requires a defined cutoff for purposes of notice and priority. There is no "substantial compliance" exception to statutes of limitation.

C. The Legal Concept of "Deposit" Can Be Satisfied Only By Compliance with Certain Prerequisites

As previously explained, recording procedures have historically involved an element of delay in the completion of "recording." A document is "deposited" with the recorder, but there may be a time lag before the actual copying and indexing is completed. At first blush, it would appear that it is this time lag that presents the problem in this case. Further

analysis reveals, however, that the real problem involves the meaning of the term "deposit." The mere act of giving a document to the clerk for recording is not sufficient in itself to constitute a "deposit."

Before the recorder may accept a document for recording, the document must meet certain minimum requirements. Civil Code section 1170 itself provides, for example, that the document must be "duly acknowledged or proved and certified." These are statutory prerequisites to a "deposit."

Other prerequisites may also apply before a document may qualify for copying and indexing—i.e., recording. Here, for instance, even according to Rotarius's declaration, the recording of the quitclaim deed required not only the deed, but also a preliminary change of title form,[3] and another (unidentified) form. Inferentially, the clerk *did not accept* the deed for recording without these additional forms.

Counties may charge a recording fee. (Gov. Code, § 27360 et seq.) Counties may also impose a documentary transfer tax. (Rev. & Tax. Code, § 11901 et seq.) The Revenue and Taxation Code specifically provides that payment of the transfer tax is a condition precedent to the completion of recording. (Rev. & Tax. Code, § 11933.) Also, any document subject to the tax which is "submitted for recordation" must bear on its face the amount of tax due. (Rev. & Tax. Code, § 11932.) Necessarily, if the document must bear the notation on its face when it is "submitted for recordation," no "deposit" or submission for recordation can be effected before the notation is placed on the document. Although

the Government Code does not contain similar specific provisions that payment of recording fees is a condition precedent to recording, both by parity of reasoning to the Revenue and Taxation Code provisions, and of logical necessity, the payment of statutorily required recording fees must also be a prerequisite to recording.

Accordingly, certain recognizable and specific formalities must be met before a document can be deemed "deposited."

Although Civil Code section 1170 does not give us a precise definition of "deposit" or tell what formality is required, the statutory history is instructive. As originally enacted in 1872, Civil Code section 1170 provided that, "An instrument is recorded when duly acknowledged or proved, certified, and deposited in the Recorder's office with the proper officer, and by him filed for record, by noting thereon such filing, with the minute, hour, day and year thereof, and subscribing the same." (Civ. Code, § 1170, West's Ann. Cal. Codes, Historical Note, p. 168.)[4] In the 1873-1874 session, the Legislature amended the statute. The amendments deleted the requirement that the recorder must endorse the exact time of filing on recorded documents, "so as to make recording effective upon deposit in the recorder's office." (*Ibid*.; see also, Amends. to Cal. Codes 1873-1874, Cal. Civ. Code,

---

[footnote continued from previous page]

[3] Or the fee in lieu of the change of title form. (See Rev. & Tax. Code, § 480.3, subds. (b) and (c), discussed in fn. 2, *ante*.)

[4] The same statute provided that "[i]t shall be the duty of the Recorders, *upon the payment of their fees for the same*, to record, or cause to be recorded" certain classes of documents, such as deeds, wills, marriage certificates, and so forth. (Stats. 1951, ch. 25, § 12, p. 201, italics added.) That is, the payment of fees was required before any duty to record a document arose.

ch. 612, § 138, pp. 226-227.) The requirement of endorsing the document with the time of deposit was restored in 1907 when the Legislature amended the then-existing Political Code. (Former Pol. Code, § 4137; see Stats. 1907, ch. 282, § 1, p.395.) This provision became section 27320 of the Government Code in 1947.

Government Code section 27320 now reads, "When any instrument authorized by law to be recorded is deposited in the recorder's office for record, the recorder shall endorse upon it in the order in which it is deposited, the year, month, day, hour, and minute of its reception, and the amount of fees for recording. The recorder shall record it without delay . . . ."

Obviously, Government Code section 27320 envisions an act of deposit and a later (albeit "without delay") recordation. Thus, the Government Code prescribes a sequence of two crucial steps for recordation: "deposit" of a document ready for recordation, and actual recordation.

The position taken by the defendants calls instead for a three-step procedure: first, the applicant "deposits" a document by handing it to a clerk; second, the recorder takes the fees, endorses and time-stamps the document; and third, the recorder copies and indexes (records) the document. Such a three-step approach would create an intolerable uncertainty and would open the door for considerable mischief.

Consider the facts here: Rotarius's declaration indicates that the last thing he did in the recorder's office was to take the deed and other documents to the cashier's window, where the cashier "stamped" the documents. Rotarius's declaration states nothing concerning payment of fees, but the deed itself bears a stamp showing that a fee was paid.

The deed also has on its face a notation by Rotarius that no documentary transfer tax was due. Under Evidence Code section 664, we presume that "official duty [is] regularly performed," and that, therefore, the recorder's office required the statutory fee for recording the deed. (*Ibid*.; see also *People* v. *Jackson* (1996) 13 Cal.4th 1164, 1213.)

Defendants would apparently allow the tender of an incomplete document or a document without proper fees to be "deposited," and therefore "deemed recorded" under their three-step approach. Defendants assume that merely handing a document to a clerk is a "deposit," without taking account of other qualifications before a document may be recorded. The law cannot countenance such a conclusion, as it would lead to absurd results. Unless a document has satisfied the requirements necessary to qualify as a recordable document—unless it "counts" as something that will ultimately be copied and indexed—it cannot be considered "deposited" *for recordation* or "deemed *recorded*."

The recorder is under no duty or obligation to record or even to accept such a document. Indeed, the recorder is under a statutory obligation *not* to record documents if, for example, required fees are not paid. The document need not ever be entered into the public records for any purpose, constructive notice or otherwise. An act causing significant legal consequences to the rights and status of third parties must require more than merely handing a paper to a clerk.

The act of stamping the document after the fees have been paid completes the act of depositing the document. It is only at that point that the document has satisfied the statutory prerequisites to ultimate recordation. The recorder need not and does not accept the tender of deposit unless and until the document has met any conditions precedent to

qualifying as a recordable document. The endorsement or stamp of the time of receipt is the final action which completes "deposit[] in the recorder's office, with the proper officer, for record." (Civ. Code, § 1170.)

According to Rotarius's and Dietrich's declarations, Rotarius's initial tender of the quitclaim deed at 11:15 a.m. was incomplete. He lacked two additional required forms and he had not, as yet, paid the required fees. The quitclaim deed, of itself, was not in recordable form, and the recorder's clerk had no duty to accept it "for record." Indeed, Rotarius's and Dietrich's declarations themselves show undisputedly that the clerk did not accept the deed at that time "for record." The only evidence of a completed "deposit" was (1) Rotarius's averment that he was directed to the cashier where, inferentially, Rotarius paid the required fees, and the cashier endorsed or stamped the documents, and (2) the actual stamped endorsements on the face of the documents themselves. Then, and only then, did a "proper officer" accept or receive a "deposit" of the documents "for record."

One early case may initially appear to suggest that the recorder's stamp or endorsement is not required for a deposit. In *Edwards* v. *Grand* (1898) 121 Cal. 254, 256, the California Supreme Court held that, under Civil Code section 1170, "[a]n instrument is 'filed' for record when it is deposited in the proper office, with a person in charge thereof, with directions to record it." In that case, the priority of two documents was at issue. One had been handed to the recorder after business hours on one day with the request that he record it first thing in the morning. The other had been handed to the recorder before business hours (he was on his way to work) the next day. The recorder endorsed both instruments "[f]iled for record" at the hour that he opened his office on the second day.

The Supreme Court opined that the "filing" on the earlier day had priority and the notations on the document by the recorder did not determine the priority.

Edwards v. *Grand*, *supra*, 121 Cal. 254, does not contravene the general proposition that "deposit" is complete only when, and if, the recorder has accepted a document as proper "for record." For one thing, the case does not speak to the issue of payment of recording fees. Moreover, the issue there did not concern the definition of the term "deposit." Rather, it concerned the conclusiveness of the evidence contained in an endorsement, given that there was a discrepancy between the dating of the endorsement and actual events. Here, Rotarius does not contend that the cashier stamped and endorsed the documents at any time other than when the statutory prerequisites to recordation—additional forms and payment of fees—were actually met. At the time *Edwards* was decided, no statute equivalent to Government Code section 27320 existed. The time-endorsement requirement had been deleted in the 1870's and was not restored until 1907.

Defendant's three-step approach to recordation is unworkable. It allows the concept of "deposit" of a document to become vague and uncertain. The two-step approach provides solid evidence of when a "deposit" of a document "for record" is actually completed. In most cases, a fees-paid endorsement and time-stamp on a document accepted "for record" provides a bright-line test or presumption that a document was "deposited" "for record" at that date and time.

V. Defendants Have Not Demonstrated a Triable Issue of Fact By Reference to Severance by Other Means

In a further attempt to find a triable issue of fact defendants have argued in their brief that severance of the joint tenancy occurred by means other than the quitclaim deed which we have found to be invalid. Defendants' counsel also raised the issue at the time of the summary judgment and Wilson raised it in her cross-complaint. The cross-complaint, in effect, contends that Derrick was the owner of the entire property at the time of his death. The reasoning is that first he severed the joint tenancy with Patience, presumably by his filing in 1988 of an action in forcible detainer, quiet title and declaratory relief. By severing the joint tenancy, he and Patience became tenants in common. Thereafter, Derrick acquired Patience's undivided 50 percent interest through adverse possession.

Civil Code section 683.2(a) does refer to "other means" of severance and the contentions of the pleadings are clearly possible. This does not, however, avail the defendants anything. The only claim that Wilson can make in these proceedings is through the deed which, as we have explained, was invalid because it was not recorded before Derrick's death. Snyder has no standing whatsoever on the basis of the existing record. She is not an heir, grantee, assignee or otherwise entitled to any interest in the property. Therefore, as to these defendants, the invalidity of the deed is dispositive of all issues. We do not pass upon the issues of whether Derrick owned something more than a joint tenancy interest since, regardless of what his interest was, he conveyed nothing by the quitclaim deed.

To state it another way: under these pleadings and as to these parties the question of "other means" severance does not raise a triable issue of fact.

CONCLUSION

Because the defendants' opposition declarations shows unequivocally that there could have been no completed, irrevocable and public "deposit" of the salient document "for record" at any time before 12:54 p.m. on March 29, 1995, defendants failed to raise any triable issue of fact concerning the severance, or lack thereof, of the joint tenancy.

DISPOSITION

Accordingly, we affirm the judgment of the trial court.

/s/ Ward
J.

I concur:

/s/ Hollenhorst
Acting P.J.

I respectfully dissent.

While I agree with the majority's analysis of Civil Code section 683.2, subdivision (c), and their conclusion that actual recording of the instrument that severs a joint tenancy is not required, I disagree with the majority's holding that such a document is "deposited for recording" within the meaning of Civil Code section 1170 only when all the extraneous requirements of recordation have been met. In my view, the majority ignores the express language of Civil Code section 1170 and, in doing so, eliminates any distinction between a document that is "actually recorded" and one that is "deemed recorded" upon deposit. Because I do not share the majority's view of what constitutes "deposit," I would conclude that defendants' showing in opposition to plaintiff's summary judgment motion was sufficient to create a triable issue of material fact on the question of whether the quitclaim deed was "recorded" in compliance with Civil Code section 683.2, subdivision (c), for reasons I now explain.

Civil Code section 1170 states: "An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the recorder's office, with the proper officer, for record."

According to its plain language, the only express statutory prerequisite to "deposit" of an instrument for recording is that the instrument be "duly acknowledged or proved and certified." In other words, the *instrument* must be in recordable form. The majority focuses on other requirements, unrelated to the form of the instrument, that must be met before the recorder's office actually will record an instrument. That focus is irrelevant in my view and has the effect of negating the distinction between actual recording

and deposit for recording. In short, what the majority describes as "statutory prerequisites" to a "deposit" for recording, in fact, are prerequisites to actual recording.

There is no dispute that the quitclaim deed in question in this case comported with the above-noted requirement of Civil Code section 1170 that it be duly acknowledged or proved and certified. Although it was in proper from, the recorder would not actually record the quitclaim deed because it was not accompanied by a preliminary change of ownership form. Such a form is a prerequisite that is extraneous to Civil Code section 1170 and, as such, is irrelevant to the question of whether and when the quitclaim deed was "deposited for recording" with the recorder's office such that it was "deemed recorded."

In my view, a deposit for recording occurs when a document in recordable form, i.e., one that is duly acknowledged as was the quitclaim deed at issue here, is handed to a clerk in the recorder's office with the intent that the document be recorded. Mark Rotarius stated in his declaration that he did just that, but that the clerk would not actually record the quitclaim deed without the preliminary change of ownership form. According to Rotarius's declaration, the clerk retained the quitclaim deed while he "completed" the requested change of ownership form and then he returned to the counter.[1]

---

[1] The majority criticizes, at great length, the adequacy of Rotarius's declaration because he does not account for his actions during the interim between the time he presented the quitclaim deed for recording and the time the instrument actually was recorded. I am not aware of a requirement that, in order to create a triable issue of material fact, a party must present all evidence, regardless of relevance. I agree that an explanation of how Rotarius spent the intervening time would be interesting and probably is essential to a trier of fact in assessing his credibility. However, for purposes of this summary judgment motion, that evidence is not relevant. Equally irrelevant to resolution of the issues in this

[footnote continued on next page]

The majority views Rotarius's act as inadequate because he did not give up control or make an irrevocable deposit of the deed.{Opin. 9} That simply is an inaccurate and incorrect characterization of his conduct. Rotarius handed over the quitclaim deed for recording and presumably did so without any intent or expectation that he would regain possession of that instrument or that he would revoke the deposit. Nor did he do so. Instead, the clerk in the recorder's office returned the deed to Rotarius for the limited and brief purpose of taking the document to the cashier to pay the requisite fees. That the recorder's office refused to accept Rotarius's relinquishment does not alter the fact that he did relinquish the quitclaim deed. That Rotarius briefly regained "control" of the deed, through no purposeful act of his own, is irrelevant.[2] In my view, Rotarius made the quitclaim deed "public and irrevocable" (*Dougery* v. *Bettencourt*, *supra*, 214 Cal. at p. 465) when he handed the instrument to the clerk in the recorder's office and thus "deposited" that deed for recording.

All the rhetoric aside, what the majority actually holds in this case is that the recorder's endorsement, i.e., the official date and time stamp, on a document is the only admissible proof that a document has been deposited for recording within the meaning of

---

[footnote continued from previous page]
appeal is the majority's speculation that Rotarius possibly forged Wilson's signature on the pertinent form. I will not further address the matters.

[2] Had Rotarius left the recorder's office after regaining "control" of the deed, as the majority speculates he could have done, then the quitclaim deed would not have been recorded and the question of when it was "deposited for recording" would be arguably irrelevant. Alternatively, such conduct could easily be construed as a revocation of the earlier deposit. In this case, the issue is moot because Rotarius did not leave and instead took the quitclaim deed to the cashier as directed.

Civil Code section 1170. While I appreciate the majority's desire for a bright line rule or definition of what constitutes "deposit for recording," the line the majority draws in this case shines too brightly. Rather than illuminate, the majority's bright line obscures. It obscures the distinction between actual recording and deposit for recording and thereby effectively eliminates the latter. In short, while the majority states that "deposit for recording" is sufficient under section 683.2, subdivision (c), it defines "deposit" to mean "actual recording." The majority's rule also obscures the actual import of the holding in this case: The recorder's date and time endorsement on an instrument creates an irrebutable presumption that the document was deposited at the time and on the date indicated. Such an irrebutable presumption is not authorized by law. (See Evid. Code, § 664 which creates a *rebuttable* presumption that an official duty has "been regularly performed.") Nor is it warranted, as the majority states, in order to prevent "considerable mischief." Although the majority does not identify that "mischief," I assume the term refers to the potential difficulties of proof that arise absent a "bright line" rule. What the majority apparently views as "mischief" is, in fact, nothing more than the ordinary problems of proof that accompany litigation -- conflicting statements and evidence that require the trier of fact to decide what actually happened and whose testimony to believe.

For the reasons noted, I conclude that defendants' showing was sufficient to create a triable issue of material fact regarding whether the quitclaim deed was deposited for recording before Derrick's death and thereby complied with the requirement of Civil Code section 683.2, subdivision (c)(1). Therefore, I would reverse the summary judgment in this case.

McKINSTER, J.